

CHAPTER 6 CONSTRUCTION PROCUREMENT

PART 6.3 PRE-QUALIFICATION OF CONTRACTORS AND SUBCONTRACTORS

6.3.1 STATUTORY AUTHORITY

1. SC Code § 11-25-1825 allows Agencies to pre-qualify construction bidders and sub-bidders on a specific construction project under specific and limited conditions. This provision requires that the Office of State Engineer develop a procedure and list of criteria agencies must use for the pre-qualification of construction contractors.

2. Regulation 19-445.2145(G) requires that the procedure and criteria developed by the Office of State Engineer be incorporated into the *Manual for Planning and Execution of State Permanent Improvements—Part II*.

6.3.2. APPROVAL TO PREQUALIFY BIDDERS AND SUB-BIDDERS

An Agency may only pre-qualify bidders and sub-bidders with the State Engineers approval. An Agency desiring to pre-qualify bidders and sub-bidders must submit a written request to do so to the State Engineer. The Agency's request must set forth facts demonstrating that the project is either unique in nature or over \$10 million in construction value. The State Engineer must approve the Agency's use of prequalification by written determination that the project is unique in nature or over \$10,000,000 in construction value. If the State Engineer approves the use of prequalification, OSE must supervise the project.

6.3.3 PUBLIC NOTICE

The Agency must advertise the pre-qualification process in SCBO soliciting statements of qualifications from prospective bidders. The SCBO notice must provide a description of the project and must notify prospective bidders of the Agency's intent to pre-qualify bidders and sub-bidders (if they will be pre-qualified). If the Agency intends to pre-qualify sub-bidders, the Agency must identify which trades it will pre-qualify. The notice must inform prospective bidders that they may obtain an information package listing necessary qualifications and containing the statement of qualification forms they are to fill out and submit to the Agency. The notice must provide prospective bidders with information on how to obtain the information package and with the location for submitting statements qualifications and the date time after which the Agency will no longer accept statements of qualifications.

6.3.4 PREQUALIFICATION INFORMATION PACKAGE

The Agency will find two sample information packages in OSE's Prequalification Handbook on OSE's Web site. The first sample information package addresses the prequalification of prime bidders only. The second sample addresses the situation where the agency has chosen to pre-qualify both the prime bidder and one or more listed sub-bidders. The Handbook contains five documents that the Agency must include in the prequalification information package that are designed to collect the information that an agency will need to carry out a prequalification procedure and to establish a fair, objective, and consistent statewide standard for evaluating potential contractors. These five documents are:

1. Contractor's Qualification Questionnaire: the questionnaire includes spaces for answers the contractors are to provide on the forms that they are to return to the agency.¹ Attached to the questionnaire is the list of questions that the agency will address to the contractor's past performance references. The "Contractor's

¹ The documents included in this package are on the OSE Web site.

Qualification Questionnaire” and the documents that the questionnaire requires prospective bidders to submit to the Agency form the Statement of Qualifications;

2. Interview questions the agency’s designated interviewer must ask in conducting reference interviews. The agency may, in its sole discretion, ask additional questions to ensure full understanding of the responses offered by the past performance references;

3. Instructions for Past Performance Interviews: this document defines the process the agency’s designated interviewer should use for conducting the reference interviews;

4. The Scoring Process: this document defines the minimum requirements for prequalification, the list of questions the Agency is to score, and the associated point structures;

5. Pre-qualification Scoring Matrix: the Agency is to use the scoring matrix for summarizing the scores assigned during the agency’s rating of the responses submitted by the contractors and references.

6.3.5 RECEIPT AND OPENING OF STATEMENTS OF QUALIFICATIONS

The statement of qualifications submitted by bidders and sub-bidders contain confidential information and the Agency and its personnel must treat them as confidential. It is advisable for the Agency to have each of its employees involved in the prequalification process execute a confidentiality statement similar to that required in the Competitive Sealed Proposal process.

The Agency may open and start evaluating statements of qualifications as soon as it receives them. The Agency should first review a submittal to determine if prospective bidder submitted all the required information and documents (i.e. is it responsive). If not and if the time for submitting statements of qualifications has not passed, the Agency may contact the prospective bidder to advise them of the defect and allow them to cure the defect by submitting the missing information or documents by the time stated in the solicitation for receipt of statements of qualifications.

6.3.6 REVIEWING AND SCORING STATEMENTS OF QUALIFICATIONS

The Prequalification Handbook provides the Agency with resources to help it in reviewing a prospective bidder’s statement of qualifications and, if the Agency has reason to question its veracity, resources to verify the information contained therein.

The Agency must score a prospective bidder’s statement of qualifications and past performance interviews using the “Scoring Process” document and “Scoring Matrix” in the Prequalification Handbook.

6.3.7 NOTICE OF PREQUALIFICATION

The Agency must notify prospective bidders whether or not they are pre-qualified within the time specified in the solicitation. In the case of general contractors, the Agency need not notify all bidders submitting statements of qualifications who and who is not pre-qualified. The better practice is to notify each general contractor about his or her status only.

6.3.8 PROTEST RIGHTS

As provided in SC Code §11-35-1825, the determination of which bidders are pre-qualified, and thereby entitled to bid, is not protestable under SC Code §11-35-4210 or any other provision of the code.